PRESERVED

G. R. S. App. F. IX-4]

Previous References.

1942.

File No. 22-42

Serial Nos. 1

Later References.

A

47

GENERAL AND REVENUE SECRETARIAT

Serial Nos.

Part B for November 1942

SUBJECT.

The Defence of India Rules Validating Act, 194

To

The compiler, Mysore Gazette

No. RL 472- Legis 22-42-1 dated 13th October 1942

Directs the publication of the Act as Act No XL of 1942

General and Revenue Secretariat | File No. | of 194 | [App. F. III-2

Serial No.

In view of the decision of the High Court in Criminal Mis.Petitions Nos.27 to 30 of 1942-43 on its file, it is considered desirable to pass an Act amending the Defence of India Act, a draft of which is sent herewith. Government may kindly be favoured with the opinion of the High Court at a very early date on the point whether the proposed measure would meet the requirements of the situation.

U.O no 26/42 dated 22-9-42

C. Narayanaswamy
Secretary to Government,
Law Department.
22-9-42.

The Registrar,
High Court of Mysore,
with compliments.

D, Dis 112 42-43
Encl. one

High Court of Mysore,
Bangalore, dated 25-9-1942.

Returned with compliments with copies of the minutes of the Judges of the High Court on the subject.

N. Samaiengar
REGISTRAR.

NOTE—Cont. Sheet.

WD 04155—GPB—55,000—23-10-41

G.R.S. III—3]

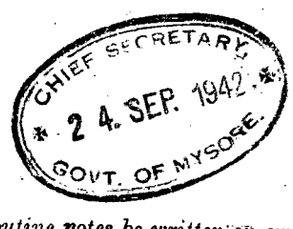
ROUTINE NOTES

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Mr. S. K. Venkatarama Iyer
& Mr. C. S. Venkataramana Iyer
will carefully compare
the proof of the D. S. R
with the originals &
point out any mistakes
& omissions. They are
requested to finish
the work as early as
possible so that the
rules may be published
in the Gazette very
early

Chief Secy
W. C.

23-9-42



N. B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

WD 078—GPB—30,000—25-7-40

Mr. S. R. Venkatachari avaru

You will please arrange

all the amended rules & the

D.G. Rules

CC

26. 9-41

Serial No.

2) Two proof copies are submitted. In the proof marked A Defence of India Rules are copied mutatis mutandis.

In the proof marked B necessary corrections, 3) as far as possible, are made so that they may be published as rules made by this Government.

4) Since the Chief Justice suggests, "Under our Act, as it stands, the Government can, if they think it wise, copy every rule made by the Government of India and introduce a similar rule in Mysore. No greater expenditure of time, stationery, or printing will be required for making and notifying the rule here than for republishing here the rule made by the Government of India. But the prerogative of His Highness and the dignity of the State will be preserved"; ~~Government~~ Notification as per A has to be issued if the Govt. has to make rules as its own, though copied. But this may lead to complications for inspite of all the care bestowed, mistakes are likely to be committed in making alterations especially in portions relating to matters in which this Government has either concurrent or no jurisdiction. If however it is considered necessary that the rules may be published as per this corrected proof, Notification as per A1 is sufficient. If any complications arise, as is likely, necessary corrections may be made as mistakes are detected or are pointed out.

NOTE—Cont. Sheet.

WD 04155—GPB—55,000—23-10-41

File No. of 194

General and Revenue Secretariat

Serial No.

5) The better method is to issue the Defence of India Rules, mutatis mutandis as made by this Governmen They may be issued under the Notification A. Necessary ~~provisions~~ provisos are added to it for suitable conversion of references. But it is subject to awkwardness of usin the expressions applicable to British India in Rules made by us.

6) The safest method is to issue the Defence of India Rules mutatis mutandis under Notification B as applied to Mysore. There is the theoretical objectio to it. But in support of it the following arguments may be stated.

We are practically introducing the Rules made by the Central Government and only that fact will be admitted in the Notification. There will be no legal objection to it since Section 2 read with Section 5 of the Defence of India Act authorises application of Rules made by the Central Government and it will be consistent with the practice hitherto followed. It may be pointed out that when Section 31 of the General Clauses Act is intended to make even enactments passed by the Government of India applicable to Mysore and when they are to be applied even by Section 4 of our Defence of India Act it will be less objectionable to apply rules passed especially under the Defence of India Act already made applicable to Mysore and meant

Serial No.

for the Defence of India including Mysore. Under Section 2 of the Coinage Act even future enactments, not merely rules, made by the Central Government are made applicable to Mysore. The right of coinage is no doubt given to the Government of India and therefore with it the implied right to make laws regarding the same. But a similar argument may apply to the Defence of India. The High Court itself has suggested the issue of a similar Notification in the case of rules to be issued under the Indian Soldiers' Litigation Act. The file relating to it is linked.

8) Both aspects are submitted so that it may be decided which method may be followed.

Secs
28-9-42

Minister for Finance & Revenue

9) Draft notfn & memorandum both Mysore A.C.'s adopting the Indian Rules Notfn (Customs). All future amendments or additions will be 'made' in Mysore

2879

10) The Dewan has approved the draft notfn & further amended the Indian Notfn. Approval & its issue

issue

Secs

Notification

Secs 1730/W-8-28 Sept. 42 to the Comptr

28-9-42

NOTE—Cont. Sheet.

WD 04155—GPB—55,000—23-10-41

Serial No.

11) The above note was submitted on the assumption that the required Validating Act would be proceeded with. Unless the Validating Act is passed or atleast an amendment to Section 5 of Act XXVI of 1939 is made simultaneously, the present Notification cannot be issued, applying the rules as amended to Mysore, for in whatever form the Notification may be issued, it would amount to a virtual repeal of the rules which are now in force. The repeal would affect pending prosecutions in any case, for it has been held in a number of English Cases that after a statute has been repealed it cannot be acted upon in respect of proceedings commenced under it, before its repeal, even though the repealing statute re-enacts the penal clauses of the statute repealed. This common law principle applies to proceedings taken under the Defence of India Rules, which are not closed by the date of repeal and reissue.

12) The authorities referred to are found at page 774 of the book herewith submitted.

13) It is to avoid such a contingency that saving provisions are made in all repealing enactments, and a general provision is made by Section 6 of the General Clauses Act. The provision in the General Clauses Act does not apply to Rules, but only to enactments. Similar saving provision cannot be made in the rules themselves, for a rule cannot validate previous acts.

14) Unless at least an Amending Act is passed simultaneously with the issue of the rules as amended

Serial No.

amended under the present Notification, offenders in the pending cases escape punishment. Therefore an Amending Act may be passed adding Section 5(A) to Act XXVI of 1939 in the terms of Section 6 of the General Clauses Act-

"5(a) Where all or any of the rules made under the said Act are repealed or modified then unless it is otherwise expressly provided in the repealing or modified rule or rules, the repeal or modification shall not --

(a) revive anything not in force or existing at the time at which the repeal or modification takes effect; or

(b) affect the previous operation of the rules so repealed or modified or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule so repealed or modified; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any rule so repealed or modified; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege obligation, liability, penalty, forfeiture or punishmen as aforesaid; and any such investigation, legal

NOTE—Cont. Sheet.

WD 04155—GPB—55,000—23-10-41

Serial No.

legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing or modified rule had not been made".

15 Or an amendment may be introduced into the General Clauses either by (1) inserting Rules by the side of 'Act' in Section 6 or (2) by amending the definition of 'enactment in Section 3(12) so that it may include Rules passed under an Act.

16 I may be permitted to point out that if the word 'modification' amounts to repeal, as it is likely to be construed, then even the main Rules may be held to have been repealed by the Notification dated 22-11-39

17 I therefore submit that the best solution is to pass a Validating Act.

Cus
30-9-42

18 The above was brought to the notice of the Hon'ble Law Member during discussions with the Madras Govt. & Commissioner

Cus
30-9-42

19 Subsequently I saw the file received from the High Court in connection with the framing of Rules

Serial No.

20) Rules under the Soldiers Litigation Act. The High Court suggested the issue of a Notification similar in terms to the Notification issued for the Defence of India Rules without noticing that the provisions of Section 31 of the General Clauses Act are not applicable to the Rules passed under the said Act since there is no provision in it corresponding to Section 5 of Act XXVI of 1939 (i.e. the Defence of India Act) as applicable to Bombay,

21) During the discussion with the Chief Justice he also suggested that either Section 6 of the General Clauses Act or the definition of an enactment given by Section 3(12) may be amended so that no difficulty might arise when rules under any enactment are re-issued.

22) When the Notification dated 22nd November 1939 was shown to him he was also inclined to take the view that it might have the effect of repealing even the main Rules.

23) He favours the idea of issuing the Rules and the amendments in a consolidated form. He is strongly of the opinion that there is no use in taking risks and issuing Notifications, publishing rules in any form and that a Validating Act must be passed simultaneously with the publication of the Rules as consolidated. He added that he was not in agreement with the view that a Validating Act could not be passed as was opined by some of the learned Judges and advised me to proceed

NOTE—Cont. Sheet.

WD 04155—GPB—55,000—23-10-41

File No. of 194 | General and Revenue Secretariat

Serial No.

with the Validating Act and not to take any risks. I showed him the draft herewith submitted which I had prepared and he approved of it suggesting the modifications made in pencil in ~~the draft~~ it, since he was of opinion that not only the amendments but also the rules should be validated.

24) Therefore I respectfully suggest (1) that a Validating Act as per the rough draft herewith submitted may be passed, and (2) Section 6 or Section 3(12) of the General Clauses Act may be amended so that the provisions of the Act may be made applicable to ~~the~~ Rules ~~also~~ which may have been made applicable in future. If the proposal is approved final drafts will be submitted

Yes Sir 4/10

This may be taken up separately for adoption 1/10

Cus 7-10-62

Deputy Secretary (Admn.) & Secretary to the Govt. of India, Ministry of H.H.R.

25) The amendments are separately issued as an Ordinance on the 9/1939. The Validating Act to the Ordinance is in this file

4/10

26) Min. ... Spl Rev & Fin Secy's Cus 4-10-62

Minister for H.H.R. 5.10.62

Secretary for H.H.R.

Dewan

28) 7.10.62

27) D.O. letter with official draft is submitted

Cus 5-10-62

Minister for Law

29) 6/10

Cus 6-10-62

General and Revenue Secretariat	File No.	of 194	[App. F. III-2

Serial No. S. N. submitted in 7-10-41

Delaware

2872

NOTE—Cont. Sheet.

WD 04155—GPB—55,000—23-10-41

Submitted to His Highness

I submit herewith a Final Note by the Minister for Law *on the subject of* the promulgation of an Act to validate the orders made and action taken under the Defence of India Rules, *for His Highness's gracious* ~~approxxdx~~ sanction.

N M Chowdhary

Dewan.

Final Note by the Minister for Law

—

Subject.—

Promulgation of an Act to validate the orders made and action taken under the Defence of India Rules.

The Defence of India Act was applied to Mysore by Act XXVI of 1939 on 4th September 1939.

The rules issued by the Central Government were applied, mutatis mutandis, to Mysore under the following Notification, dated 4th September 1939:-

> "In exercise of the powers conferred by Section 2 of the Defence of India Ordinance, 1939, as applied to Mysore, the Government of His Highness the Maharaja of Mysore are pleased to apply, mutatis mutandis, to Mysore, the Defence of India Rules annexed hereto: ....."

When the next occasion arose for issuing amendments, the amendments made by the Central Government to the Defence of India Rules up to November 1939 were applied by Notification No. P.3440/ Legis. 20-39-7, dated 22nd November 1939. Accepting the suggestion made by the Residency in letter No. F.59-39/W dated 7th November 1939, the following addition was made in that Notification with the object of making future amendments made by the Government of India to the Defence of India Rules operative automatically in Mysore:-

> And subject to any amendments to which the said Rules are for the time being subject in British India."

Relying on this provision, amendments issued by the Central Government subsequently were not being notified under Section 2 of the Act. From July 1940, however, they were being published for information in the Mysore Gazette.

In Criminal Petitions Nos. 27-30 of 1942-43, the High Court has held that Section 2 of the Defence of India Act does not authorise

authorise the application to Mysore of amendments to be made in future by the Central Government and that therefore the words "subject to," etc., in the Notification of 22nd November 1939 are ultra vires. This decision applies to all amendments issued by the Central Government subsequent to those mentioned in the Notification of 22nd November 1939.

A Notification is under issue applying to Mysore these amendments under Section 2 of the Act. It is necessary, however, to validate the several orders made and action taken under these Rules till now, in view of the decision of the High Court. A Validating Act is therefore necessary.

The draft Bill is prepared on the basis of the advice by the Chief Justice.

The Dewan and other Ministers agree that the proposed measure is necessary.

I solicit gracious sanction of His Highness to the promulgation of the measure in exercise of His Highness's prerogative, as in the case of the principal Act.

Bangalore,
7th October 1942.

MINISTER FOR LAW.

215 R2

General and Revenue Secretariat
R. A. & L. C.

File No. of 194 [App. F. III–2

Serial No.

The previous assent of His Highness has been accorded on 9.10.42 for the promulgation of this Measure

Draft for directing publication as Act XL of 1942 in a Gazette Extraordinary to issue today from Bangalore is put up as instructed.

Sd/-
13.10.42

Law Secy)

Issued
Cus
13-10-42

Issued no RL 472. Legis & Camp Mysore 13.10.42 directing publication of Act as Act XL of 1942

The file may be sent to CB for circulation

Sd/-
13.10.42

Confidential Branch)

Circulated
13/10

BCPW
13/10

CHIEF SECRETARY
13 OCT. 1942
GOVT. OF MYSORE

NOTE—Contn. Sheet

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Promulgation of an Act to validate the orders made and action taken under the Defence of India Rules.

Order.

9/10/'42

Chief Secy
9/10
10/10/42
11/10
issue as instructed by the Law Minister
& circulate
13-10-42

General and Revenue Secretariat.

C 431

H.H 296

SUBJECT:—

Promulgation of an Act to validate the orders made and action taken under the Defence of India Rules.

(*)

14. All urgent or confidential files returned with His Highness' orders may, in the absence of instructions or indications to the contrary, be ordinarily circulated to the Ministers for perusal after the issue of orders.

16. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after, to the Chief Secretary for circulation to the Ministers.

17. In all other cases, the files will first be circulated to the Ministers at Headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Council of Ministers for perusal of His Highness' orders before/after issue of orders. (*Vide* Rules 14, 16 and 17 of the Subsidiary Rules of the Mysore Government Business Rules.) (*)

14/10

Chief Secretary to Government.

Through the Secretary to Government,

.....Law.....Department. 15-10-42

3406
15.X.42.

Minister for Finance and Revenue. 17.10

3230
15/X

Minister for Law. 15/10

1963
17.10

Minister for Education. 17.10.

3097
14/10

Minister for Local Self-Govt. and Public Health. 21.10.42

Law Secy
Ag.

OFFICE OF THE SECRETARY
REPLIES ...

NOTE.—Contn. sheet

WD 0718—GPB—1,000—11-9-42

22-10-42

~~R. O. C. No.~~ 763-66 | E.B
~~D. Dis.~~

HIGH COURT OF MYSORE,

Bangalore, 21st Septr. *1942.*

REV. SECRETARIAT. 2. SEP. 1942 BANGALORE

FROM

N. SAMAIENGAR, Esq., B.A., LL.B.,
~~N. SHAMAIENGAR, Esq., B.A., B.L.,~~
Registrar, High Court of Mysore,
BANGALORE.

To

K.PHEROZE SHAW POONEGAR, Esq., B.A., LL.B.,
Assistant Secretary to Government,
Bangalore. (Law Department)

SIR

With reference to your letter D.O.No.P.2035/Cts dated 21st September 1942, I am directed to forward herewith a copy of the order in Criminal Petitions Nos. 27 to 30 of 42-43 on the file of the High Court of Mysore (regarding Criminal Cases Nos.164 to 167 of 42-43 on the file of the City Magistrate, Bangalore) as desired by you.

I have the honour to be,
Sir,
Your most obedient servant,

N. Samaiengar

REGISTRAR.

GRA/-

IN THE HIGH COURT OF MYSORE AT BANGALORE

Friday the 18th day of September 1942.

Before

Rajadharmaprasakta

MR. JUSTICE T. SINGARAVELU MUDALIAR

Criminal Petitions Nos. 27, 28, 29 & 30/1942-43.

In Criminal Petition No. 27/42-43:-

P.B. Srinivasan ..Accused..PETITIONER

v.

Government of Mysore ..Complainant..RESPONDENT

Petition under Section 498 of Code of Criminal Procedure praying that, pending disposal of Criminal Case No. 166 of 42-43 on the file of the City Magistr Bangalore, the Petitioner abovenamed may be enlarged on bail.

In Criminal Petition No. 28 of 42-43:-

1. T.T.Sharma
2. S.K.Sharma ..Accused ..PETITIONERS

v.

Government of Mysore ..Complainant.. RESPONDENT.

Petition under Section 498 of the Code of Criminal Procedure praying that, pending disposal of C.C. 167 of 42-43 on the file of the City Magistrate, Bangalore, the petitioners abovenamed may be enlarged on bail.

In Criminal Petition No.29/42-43:-

P.R. Ramiah .. Accused .. PETITIONER

v.

Government of Mysore..Complainant .. RESPONDENT

Petition under Section 498 of the Code of Criminal Procedure praying that, pending disposal of C.C. No. 164 of 1942-43 on the file of the City Magistrat Bangalore, the Petitioner abovenamed may be enlarged on bail.

In Criminal Petition No. 30 of 42-43:-

B. N. Gupta .. Accused .. PETITIONER

v.

Government of Mysore .. Complainant ..RESPONDENT

Petition under Section 498 of the Code of Criminal Procedure praying that, pending disposal of C.C.No.165 of 1942 - 43 on the file of the City Magistrate, Bangalore the Petitioner abovenamed may be enlarged on bail.

HEARD:-

Mr. L.S. Raju for Petitioners

and

The Advocate-General for the Government.

ORDER.

Criminal Petitions Nos. 27, 28, 29 and 30 of 1942-43 are filed by Mr. K.B. Srinivasan, Editor, "Tai Nadu", Messrs. T. T.Sharma and S.K. Sharma, Editors, "Viswakarnataka", Mr. P.R. Ramaiya, Editor, "Daily News". and Mr. B. N. Gupta, Editor, "Janavani, respectively, under Section 498 of the Code of - Criminal Procedure. The Petitioners were each accused by the Bangalore City Police of an offence under Rule 41(3) of the Defence of India Rules as applied to Mysore. The City Magistrate of Bangalore refused to let them on bail. They approached the Sessions Judge of Bangalore who also declined to let them on bail; hence these petitions.

The learned Advocate-General, who was notified, has opposed these applications. The contention put forward by Mr. L.S.Raju, who appears for the Petitioners, is that the offence with which the Accused have been charged is governed by Section 498 of the Code of Criminal Procedure. On the other hand, the contention of the learned Advocate-General is that Rule 130-A stated to be one of the Rules under the Defence of India Act as applied to Mysore takes away the power of this Court to grant bail under Section 498 of the Code of Criminal Procedure. Mr. Raju, as his main argument, contends that Rule 130-A is not in force in Mysore and that therefore Section 498 of the Code of Criminal Procedure applies. His point is that Rule 130-A was introduced into Mysore by Notification No.P.4720-Legis.2-40-67, dated 18th March 1941, which reads as follows:- "The following Notification of the Government of India, Defence Co-ordination Department, are hereby republished for

general information." And the Notification of the Government of India runs as follows:- "DEFENCE CO-ORDINATION DEPARTMENT. NOTIFICATION. New Delhi, the 15th February 1941. No. 542-OR/40.-

In exercise of the powers conferred by Section 2 of the Defence of India Act. 1939 (XXXV of 1939), the Central Government is pleased to direct that the following further amendment shall be made in the Defence of India Rules, namely:-

"After rule 130 of the said Rules, the following rule shall be inserted, namely:-

"130-A. Special provision regarding bail.-- Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no person accused or convicted of a contraventionof these Rules shall, if in custody, be released on bail or on his own bond, unless --

(a) the prosecution having been given an opportunity to show cause against such release fails to show reasonable cause; and

(b) where the contravention is of any such provision of these Rules as the Central Government may by notified order specify in this behalf, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such contravention."

He contends that the Notification of the Government of Mysore publishes merely for information, a Notification of the Government of India and as such it cannot have the force of a rule under the Defence of India Act as applied to Mysore. According to him th section which enables the Government to make a rule under the Defence of India Act is Section 2(1) which runs as follows:- "The Central Government may, by

by notification in the official Gazette, make such rules as ~~pm~~ appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community." According to section 1 of the Defence of India Act, 1939, as applied to Mysore that Act shall mutatis mutandis be enforced in Mysore as long as and to the same extent as the said Act is in force in ~~B~~ritish India. Under Section 3, the said Act shall apply subject to the modifications specified in Schedule 1 annexed to it. Item 1 in the Schedule reads: "Save where the context otherwise requires:--
(a) reference to the Central Government, a Provincial Government, the appropriate Government or Government shall be construed as references to the Government of His Highness the Maharaja." So mutatis mutandis Section 2(1) would read as follows:-- "The Government of His Highness the Maharaja may, by notification in the official Gazette, make such rules as appear to it to be necessary or expedient ... ..." The contenti of Mr. Raju is that, unless the Government made a rule by virtue of the authority vested in them by - Section 2, it would [illegible] force of law in Mysore. The Notification publishing Rule 130-A as quoted above does not mention anything about its bein issued under Section 2 of the Defence of India Act as applied to Mysore.

The learned Advocate-General, on the other hand, contends that by virtue of the Notification of the Government of Mysore quoted above, Rule 130-A has become law in Mysore. He relies upon the two Notifi-

cations,

Notifications, viz., Notification No. P.1371-Legis. 20-39-2, dated Bangalore, the 4th September 1939, under which the following Notification was issued: "In exercise of the powers conferred by Section 2 of the Defence of India Ordinance, 1939, as applied to Mysore, the Government of His Highness the Maharaja of Mysore are pleased to apply mutatis mutandis to Mysore, the Defence of India Rules annexed hereto." and then followed certain rules. Later, on the 22nd of November 1939 by Notification No.P.3440--Legis. 20-39-7, the following words were added to the abovesaid Notification after the words "annexed hereto," viz., "and subject to any amendments to which the said rules are for the time being subject in British India." The Rules in force at present in Mysore were those issued under the Defence of India ~~Act~~ Ordinance, 1939, as applied to Mysore and when the Defence of India Act, XXVI of 1939, was introduced into Mysore on 9th December 1939 these rules were continued to have force of law under Section 8 of the Defence of India Act as applied to Mysore which runs: "Any Rules made, anything ~~done~~ done and any action taken in exercise of any power conferred by or under the Defence of India Ordinance, as applied to Mysore (Act No.XXIII of 1939) shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if this Act has commenced on the 4th day of September 1939."

The difficulty felt in interpreting the Notification of the 4th September 1939 as modified by the Notification of 22nd November 1939 is with regard to the words "and subject to any amendments to which the said rules are for the time being subject in British India." There is no doubt that under Section 2 of the Defence of India Act as applied to Mysore the Government of His Highness the Maharaja of Mysore are empowered

to make rules for purposes of the Act. But the question is whether that rule-making power enables the Government to make the rules made under Section 2 "Subject to any amendments to which the said rules are for the time being subject in British India." The learned Advocate-General contends that they have such a power, and he invites my attention to Section 5 of the Defence of India Act as applied to Mysore and to Section 21 of the Defence of India Act. According to m.. the rules made under the Defence of India Ordinance, 1939, are under Section 21 deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 3rd day of September 1939. Section 21 of the Defence of India Act is in effect the same as Section 8 of the Act as applied to Mysore, so far as the continuance of rules, orders, etc. are concerned. Under Section 5, where any rules issued by the Central Government or India under the said Act or under the Acts specified in section 4 are expressed to be amended or extended mutatis mutandis unless a different intention appears from the context, section 31 of the General Clauses Act 1899 (Act No.III of 1899), and the modifications specified in the Schedule to this Act shall apply. His argument is that these two sections enabled the Government of His Highness the Maharaja of Mysore to make rules "subject to any amendments to which the said rules are for the time being subject in British India" in the Notification dated the 22nd of November 1939

Section 21 and Section 8 above referred to refer c

to what was done, etc., and not to rules to be made in future. There are certain difficulties in applying Section 5 to the Notification relating to Rule 130-A. According to this section the rule issued by the Central Government must be expressed to be applied or extended Mutatis mutandis. The Notification of the Government of Mysore publishing for information the Notification of the Central Government regarding Rule 130-A does not express to apply or extend that rule mutatis mutandis. Further, Section 31 of the General Clauses Act does not apply to rules made under an Act since the word "enactment" as used in that section does not include rules made under an Act. Vide Section 3(12) of the General Clauses Act. / Moreover Section 5 would apply only to "Rules issued" that is, rules in force at the time of application or extension and not to rules which will be issued in future.

There is a more serious difficulty in accepting the contention of the learned Advocate-General and that is: whether under the rule-making power vested in them, the Government of His Highness the Maharaja but by the Government of British India, can have the force of law in Mysore. Section 2 of the Defence of India Act as applied to Mysore, enables the Government of His Highness the Maharaja of Mysore to make rules. ... does not vest in the Government of H's Highness the Maharaja power to notify that the amendments made to the rules by the Government of India shall automatically come into force in Mysore. For one reason, Section 2 does not empower the Government of His Highness the Maharaja to appoint or authorise any other body to make rules under the Defence of India Act as applied to Mysore, and another reason is found in Section 21 of the

If Mysore could notify that further amendments made not by the Government of His Highness the Maharaja

General

General Clauses Act, which runs as follows: "Where, by any enactment, a power to make orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any orders, rules or bye-laws so made." This section clearly shows that the power to amend a rule is vested in the authority having power to make the rule. No provision of law was brought to my notice under which, in the absence of power vested by the Act itself, the Government of His Highness the Maharaja, empowered to make a rules can appoint the Government of India to add to amend, vary or rescind any such rule. Therefore the words "and subject to any amendments to which the said rules are for the time being subject in British India" in the Notification of the 22nd November 1939 are ultra vires. In this view it appears to me that the Notification publishing Rule 130-A made by the Government of India, merely for information, does not make that rule to have the force of law in Mysore.

In view of this interpretation, I am of opinion that the power vested in this Court under Section 498 of the Code of Criminal Procedure is not governed by any restriction and as such this Court has power to grant or not bail on the applications presented before me.

In the view I have taken it seems to be unnecessary to give my opinion obiter dicta as to the interpretations sought to be put upon Rule 130-A by either side.

The offences, as I have already stated, with which

these Petitioners have been charge-sheeted and under Section 41 (3) of the Defence of India Rules as applied to Mysore. It is urged by Mr. Raju that the offences committed by the Petitioners are technical offences, that they are very respectable persons being editors of newspapers and that these facts entitle them to be let on bail pending their trials. Though it is premature to express any opinion as to the nature of the offence, it appears to me that these Petitioners may be let on bail but upon one important condition and a very necessary condition, having regard to the fact that they have been prosecuted for offences under the Defence of India Act, viz that they will not take any part in printing or publishing newspapers during the pendency of their trial. I therefore let them on bail on each of them executing a bond for Rs.500/- with two sureties each for a like sum to the satisfaction of the City Magistrate, Bangalore, and on their giving an undertaking that they will not, during the pendency of their trial, take any part in the printing or publishing of newspapers.

Copy

N. Samaiengar

Registrar

BR/BCR./7.

ACT No. of 1942.

An Act to amend the Defence of India Act, 1939, as applied to Mysore.

Whereas it is expedient to amend the Defence of India Act, 1939, as applied to Mysore, Act XXVI of 1939, for purposes hereinafter following: His Highness the Maharaja is pleased to enact as follows.-

Short title.

1. (1) This Act may be called an Act to amend the Defence of India Act, 1939, as applied to Mysore.

(2) It shall come into force at once.

Amendment of Section 1 of Act XXVI of 1939.

2. Section 1 of the Defence of India Act as applied to Mysore shall be renumbered as Sub-section (1) of that Section; and after the Sub-section as so numbered the following shall be added, namely.--

"(2) All rules made by the Central Government under Section 2 of the Defence of India Act, 1939, till the date of the commencement of this Act, shall be deemed to have been made by the Government of Mysore under Section 2 of the said Act as applied to Mysore and to have always been in force from the dates of their publication in the Gazette of India.

(3) All Rules made under Section 2 of the Defence of India Act, 1939, by the Central Government on and after the date of the commencement of this Act, shall be deemed to have been made by the Government of Mysore under Section 2 of the said Act as applied to Mysore and to be in force from the dates of their publication in the Gazette of India unless they are notified by the Government as not applicable to Mysore.

(4) For purposes of Section 2 of the Defence of India Act as applied to Mysore, publication of the rules in the Gazette of India shall be taken to amount to the making of such rules by the Government of Mysore by notification in the Official Gazette.

(5) Anything done under the Defence of India Rules, as applied to Mysore before the commencement of this Act shall be deemed to have been lawfully done as if the said Rules had been in force in Mysore from the dates of their publication in the Gazette of India; and they shall not be called into question in any Court of Law on the ground of the said Rules not being in force in Mysore.

(6) For

Act. No. of 1942.

An Act to amend the Defence of India Act, 1939, as applied to Mysore.

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* If Sub-Section 3 is to be retained, this will be an Amending Act, otherwise a Validating Act with the necessary alterations.

Whereas it is expedient to *amend the Defence of India Act, 1939, as applied to Mysore, Act XXVI of 1939, for purposes hereinafter following; His Highness the Maharaja is pleased to enact as follows:-

1. (1) This Act may be called an Act to amend the Defence of India Act, 1939, as applied to Mysore.

(2) It shall come into force on .....

2. Section 1 of the Defence of India Act, as applied to Mysore shall be renumbered as sub-section 1 of that Section; and after the sub-section as so numbered, the following shall be added, namely.--

Legality of Rules prior to 22.11.1939 was not questioned in the order of the High Court but it is better to include rules made previously also by way of abundant precaution.

(2) All rules made (from time to time) by the Central Government under Section 2 of the Defence of India Act, 1939, till..... shall be deemed to have been made by the Government of Mysore in exercise of the power vested in them by Section 2 of the said Act as applied to Mysore and to have always been in force from the respective dates of their publication in the Gazette of India.

Or may be worded similar to Section 2 of the Coinage Regulation as "All rules made by the Central Government under the Defence of India Act and for the time being in force in British India shall apply to and shall be in force in Mysore unless....."

(3) All Rules made under Section 2 of the Defence of India Act, 1939, by the Central Government on and after..... shall be deemed to have been made by the Government of Mysore under Section 2 of the said Act as applied to Mysore and to be in force from the dates of their publication (in the Gazette of India) (or in the Official Gazette) unless they are notified by the Government as not applicable to Mysore.

(4) For purposes of Section 2 of the said Act(or sub-section 2 of this Act) as applied to Mysore, publication of the rules in the Gazette of India shall be deemed to amount to the making of such rules by the Government of Mysore by notification in the Official Gazette.

"Anything done" is a comprehensive word and includes orders made, action taken etc.

This sub-section may not be necessary in view of the wording of sub-section 2. But it is usual to add such sections in Validating Acts.

(5) Anything done under the Defence of India Rules as applied to Mysore on or before.....shall be deemed to have been lawfully done as if the said Rules had been in force in Mysore from the dates of their publication in the Gazette of India; and they shall not be called into question in any Court of Law on the ground of the said Rules not having been validly in force in Mysore.

(6) For purposes of this section, the expression "Rules" shall include amendments, additions and variations thereto, and the expression "Central Government" shall mean, notwithstanding anything contained in the Schedule and Section 31 of the General Clauses Act, the Government of India.

Minutes of the Judges

CHIEF JUSTICE:-

With respect I entirely agree with the principle adopted by Singaravelu Mudaliar J. that power given by a Mysore Act to the Government of Mysore to make rules under the Act does not extend to letting someone else make rules for them and still less to - declaring in advance that rules made by some authority in some other country in future, of the purport of which they have no idea, shall have effect as if made by themselves

But now the Government propose to proceed by legislation, and they ask for our opinions urgently on the draft of an Act to be made by His Highness the Maharaja. What can be done by legislation is quite different from what can be done by rule-making powers under an Act.

The proposed Act would add 5 subsections to Section 1 of the Defence of India Act, 1939, as applied to Mysore, i.e. to our Act XXVI of 1939, leaving the present section as subsection (1). The proposed subsections (2) and (5) validate retrospectively certain rules and things done under them. I presume that our opinions are not asked whether it is necessary or wise to take such retrospective action and that is certainly not a question on which I am prepared to express an opinion. I understand that it is upon the proposed subsections (3) and (4) that our opinions are requested, as they are intended to make legally effective in Mysore rules made by the Government of India without the intervention of the

the Government of Mysore. Such rules made by the Government of India are to be law in Mysore from the moment of their publication in Delhi and to remain law here until, if ever, the Government of Mysore notifies that they are not applicable here. I doub whether the full import of those draft provisions ha been realised. They appear to me not only unnecessa but most extraordinary. With the greatest respect to the Government I suggest that they should think a hundred times before they advise His Highness the Maharaja to enact provisions so derogatory to him. What is proposed is that His Highness and his Govern- ment should surrender their discretion and their dut to the people of Mysore into the hands of the Govern- ment of India so that the Government of India will make laws for Mysore, of which neither His Highness nor his Government will know anything until after they have come into effect and of which they can get rid only by an invidious method of abrogating them. If such an enactment were in force, His Highness and his Government might wake up any morning to find a law in force in Mysore, of which they thoroughly dis- approved and to which they would never have consented Nor can it be said that that is an entirely unlikely prospect, as the Government of India, to whom this extraordinary surrender is to be made, is one of which no one can say how or of whom it will be consti tuted a week hence. But apart ~~form~~ from such practical dangers as a matter of principle I suggest for the most serious consideration of the Government that the proposed provisions would be bitterly humiliating to His Highness the Maharaja, to the Government themsel/ves

themselves and to the whole State of Mysore.

And for what purpose is all this to be done? What is to be gained by it? If the Government of India is reasonably conducted in future. it may well be convenient and desirable that the rules in Mysore should be same as in British India. Under our Act, as it stands, the Government can, if they think it wise, copy every rule made by the Government of India and introduce a similar rule in Mysore. No greater expenditure of time, stationery or printing will be required for making and notifying the rule here than for republishing here the rule made by the Government of India. But the prerogative of His Highness and the dignity of the State will be preserved.

Perhaps it may be said however that under the proposed provisions time will be saved by making a new rule come into force here from the moment it is publishe in Delhi. But will time really be saved? I suspect that that part of the provisions has crept in through inadvertence without its absurdity being noticed. Can it be seriously suggested that anyone would ever be prosecuted here for a breach of a rule after it had been promulgated in Delhi but before it had reached Mysore .. and had been published in Mysore? Surely no Judge nor Magistrate with any conscience or sense of decency would punish a man for disobeying a rule, of which not only he did not know but he could not possibly have known. The obvious, honourable and constitutional course is for the Government to make and publish such rules in Mysore.

I suggest that we recommend to the Government to drop subsections (3) and (4) of their draft as unnecessary, humiliating and in a true sense unconstitutional.

~~Please expedite the matter.~~

(Id). H. D. C. R.,
Chief Justice,
23/9/42.

Adl-ul-Mulk Mr. Justice Abdul Ghani.-

I am in entire agreement with the views of the learned Chief Justice. Not only Subsections 3 and 4 but the whole Act may be dropped, I think, as I entertain grave doubts regarding subsections 2 and 5 also when they are challenged. The object aimed at can be acheived by making similar rules and introducing them, instead of publishing the rules made by the Central Government in the Mysore Gazette for information. Both take about the same time and labour. No Mysorean is likely to accept with equanimity the course - suggested.

(Id). C.A.G.,
Judge,
23/9/42.

Rajadharmaprasakta Mr. Justice Nagesvara Iyer.-

The proposed measure appears to me to be an ill-conceived one, and it is surprising that the Law Department has not taken into consideration the very instructive remarks of Mr. Justice Singaravelu Mudaliar. The dangerous consequences flowing from the retrospective action proposed to be taken by enacting Sections 2

Sections 2 and 5 seem to have also escaped attention.

I am in complete agreement with the views of the Chief Justice. In my opinion the proposed measure may be dropped as suggested by Mr. Justice Abdul Ghani.

(Id). A. R. N.,
Judge,
24-9-42.

Rajadharmaprasakta Mr. Justice Singaravelu Mudaliar.-

I entirely agree with the Chief Justice regarding Subsections (3) and (4). Even with regard to Subsections (2) & (5), the same objections regarding publication in the Gazette of India would apply, as were pointed out by the Chief Justice with regard to Subsections (3) and (4).

The surrender of the right of making laws vested in the Mysore Legislature to another authority is highly derogatory and will be resented by the Mysore citizen particularly when we are not sure what that Government will be in future.

(Id). T. S.,
Judge,
24/9/42.

THE CHIEF JUSTICE:-

At this stage the Law Secretary has brought me a revised draft of the proposed Act, which I have marked B, the original draft in respect of which the preceding minutes have been written, being marked A .

The important variation made by the second draft B is that the Act would come into force, not at once. but on some future date. That lays the validating subsections-(2) and (5) -- open to the objections I have suggested to subsections (3) and (4).

(Id). H.D.C.R.,
Chief Justice,
24/9/42.

Mr. Justice Venkata Ranga Iyengar.-

I entirely agree with the Chief Justice.

(Id). S.V.,
Judge,
24/9/42.

Mr. Justice . Subrahmanya Aiyar.

I entirely agree with the Chief Justice. It was with great difficulty and after agitation and correspondence for over 50 years that the obnoxious and derogatory article (18) in the Mysore Treaty that certain laws (Acts) in Mysore shall not be amended etc. without the sanction of the Government of India was got abrogated a few years back. Even on the ground of emergency it is unwise and himiliating to surrender the powers of legislation to another Government. It is the easiest thing for the - Secretariat to notify the rules passed by the Central Government under the Defence of India Act as rules passed under Section 2 of the Act in Mysore and as rules applicable in Mysore mutatis mutandis. They can be copied as soon as they appear in the Gazette of India. Sometimes copies of these rules

rules are sent to us by the Residency even in advance of the receipt of the Gazette of India in Mysore. The Secretariat now publishes the rules for general information. Instead of this, it has only to be notified that they are rules framed under Section 2.

Subsections
~~Rules~~ 2 and 5 are also objectionable. I do not think any system of law would permit offences to be made retrospective.

Since many of the Rules issued by the Central Government have been newly published in the Mysore Gazette for general information, it will be necessary to get them all together and publish them as having been framed under Section 2 of the Act in Mysore.

I think even for the C & M Station these rules are separately notified by the Governor General under the Foreign Jurisdiction Act and they do not apply to that area automatically on the notification of the rules by the Central Government. [This needs verification.]

(Id). C.S.,
Judge,
24/9/42.

N Sanjeevayya
Registrar

Act No. XL of 1942.

The Defence of India Rules Validating Act, 1942

An Act to validate the Defence of India Rules as applied to Mysore.

(Assented to on behalf of His Highness the Maharaja on the 9th day of October 1942)

Whereas certain doubts have arisen as to the validity of the Defence of India Rules as applied to Mysore and the applicability to Mysore of the amendments thereto made subsequent to the 22nd day of November 1939, and it is necessary to remove such doubts;

His Highness the Maharaja is pleased to enact as follows:-

1. (1) This Act may be called the Defence of India Rules Validating Act, 1942.

(2) It shall come into force at once.

(3) It shall extend to the whole of Mysore.

2. In this Act unless there is anything repugnant in the subject or context, -

(a) "Rules" shall mean the Defence of India Rules.

(b) "Amendments" shall mean amendments made in the Defence of India Rules, and shall include additions, variations, substitutions or rescissions thereto.

3. All Rules and amendments made, from time to time, by the Central Government, under Section 2 of the Defence of India Act, 1939, till the commencement of this Act, shall be deemed to have been made by the Government of Mysore in exercise of the powers vested in them by Section 2 of the said Act as applied to Mysore ~~and to have been~~ and shall have been in force on and from the respective dates of their publication ~~in the Official Gazette for information or otherwise, and in the absence of such publication from the respective dates of their publication in~~

~~in the Gazette of India).~~

4. Anything done or purported to have been done in exercise of the powers under the said Rules or amendments or Rules modified by amendments before the commencement of this Act, shall be deemed to have been lawfully done as if the said Rules and amendments have been in force in Mysore; and they shall not be called into question in any Court of Law on the ground of the said Rules not having been validly in force in Mysore;

(Provided that all criminal proceedings for offences committed before the 5th day of October 1942 which have not been terminated before the commencement of this Act, shall be continued and concluded as if this Act had not been promulgated.)

ACT NO.XL OF 1942.

THE DEFENCE OF INDIA RULES VALIDATING ACT, 1942.

An Act to validate the Defence of India Rules as applied to Mysore.

(Received the assent of His Highness the Maharaja on the ninth day of October 1942.)

Whereas certain doubts have arisen as to the validity of the Defence of India Rules as applied to Mysore and the applicability to Mysore of the amendments thereto made subsequent to the 22nd day of November 1939, and it is necessary to remove such doubts;

His Highness the Maharaja is pleased to enact as follows:--

Short title, Commencement and extent.

1. (1) This Act may be called the Defence of India Rules Validating Act, 1942.

(2) It shall come into force at once.

(3) It shall extend to the whole of Mysore.

Definitions.

2. In This Act unless there is anything repugnant in the subject or context, -

(a) "Rules" shall mean the Defence of India Rules.

(b) "Amendments" shall mean amendments made in the Defence of India Rules, and shall include additions, variations, substitutions or rescissions thereto.

Validation of Rules and Amendments.

3. All Rules and amendments made, from time to time, by the Central Government of India, under Section 2 of the Defence of India Act, 1939 (XXXIX of 1939), till the commencement of this Act, shall be deemed to have been made by the Government of Mysore in exercise of the powers vested in them by Section 2 of the said Act as applied to Mysore (XXIII of 1956) and to have been in force on and from the respective dates of their publication.

Validation of Action.

4. Anything done or purporting to have been done in exercise of the powers under the said Rules or amendments or Rules modified by amendments, before the commencement of this Act, shall be deemed to have been

lawfully done as if the said Rules and amendments had been in force in Mysore; and they shall not be called into question in any Court of Law on the ground of the said Rules not having been validly in force in Mysore.

N. MADHAVA RAU

D e w a n.

KSH

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

No. .....

General and Revenue Secretariat,
Camp, Mysore,
Dated ~~Bangalore~~ ..... 13th October 1942

NOTIFICATION.

Order No.Rl.472 -Legis. 41-41-1.

Dated, Camp, Mysore, the 13th October 1942.

Ordered that the accompanying Defence of India Rules Validating Act, 1942, which received the assent of His Highness the Maharaja, on the 9th day of October 1942, be published as Act No.XI. of 1942, in the Mysore Gazette for general information.

K. V. Ramaya[illegible]

Secretary to Government,
Law Department.

To

The Compiler, Mysore Gazette for publication as a Gazette Extraordinary today from Mysore. (Part IV)

y to Translation Section.

NOTIFICATION.

1942

Order No. Rl. 472—*Legis.*, *dated Camp Mysore, the* 13*th October* 1942.

ORDERED that the accompanying Defence of India Rules Validating Act, 1942, which received the assent of His Highness the Maharaja, on the 9th day of October 1942, be published as Act XL of 1942, in the *Mysore Gazette*, for general informatio

C. NARAYANASWAMY NAIDU,
Secretary to Government,
Law Department.

ACT XL OF 1942.

THE DEFENCE OF INDIA RULES VALIDATING ACT, 1942.

An Act to validate the Defence of India Rules as applied to Mysore.

(Received the assent of His Highness the Maharaja on the Ninth day of October 1942.)

WHEREAS certain doubts have arisen as to the validity of the Defence of India Rules as applied to Mysore and the applicability to Mysore of the amendments thereto made subsequent to the 22nd day of November 1939, and it is necessary to remove such doubts;

His Highness the Maharaja is pleased to enact as follows:—

1. (i) This Act may be called the Defence of India Rules Validating Act, 1942. **Short title, commencement and extent.**

(ii) It shall come into force at once.

(iii) It shall extend to the whole of Mysore.

Definitions.

2. In this Act unless there is anything repugnant in the subject or context,—

(*a*) "Rules" shall mean the Defence of India Rules.

(*b*) "Amendments" shall mean amendments made in the Defence of India Rules, and shall include additions, variations, substitutions or rescissions thereto.

Validation of Rules and Amendments.

3. All Rules and amendments made, from time to time, by the Central Government, under Section 2 of the Defence of India Act, 1939, till the commencement of this Act, shall be deemed to have been made by the Government of Mysore in exercise of the powers vested in them by Section 2 of the said Act as applied to Mysore and to have been in force on and from the respective dates of their publication.

Validation of Action.

4. Anything done or purporting to have been done in exercise of the powers under the said Rules or amendments or Rules modified by amendments, before the commencement of this Act, shall be deemed to have been lawfully done as if the said Rules and amendments had been in force in Mysore; and they shall not be called in question in any Court of Law on the ground of the said Rules not having been validly in force in Mysore.

N. MADHAVA RAU,
Dewan.

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